



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Adriano Espaillat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

Dear Congressman Espaillat:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines “franchise fee” to include “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.” 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms “tax” and “assessment” were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of “franchise fee” *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The draft order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are “franchise fees” subject to the Act’s five-percent cap unless otherwise expressly excluded.

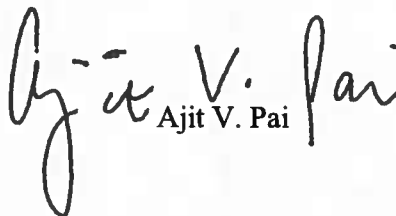
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

Page 2—The Honorable Adriano Espaillat

The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Brian Higgins
U.S. House of Representatives
2459 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Higgins:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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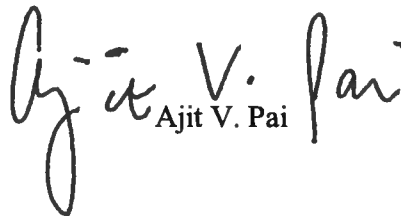
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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Eliot L. Engel
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Engel:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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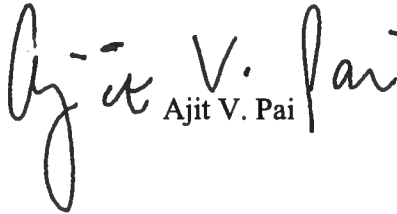
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Page 2—The Honorable Eliot L. Engel

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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Grace Meng
U.S. House of Representatives
1317 Longworth House Office Building
Washington, DC 20515

Dear Congresswoman Meng:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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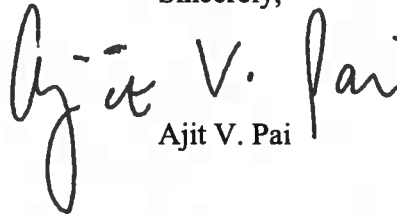
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Page 2—The Honorable Grace Meng

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Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part, followed by "V." and "Pai".

Ajit V. Pai

Attachment



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THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Gregory W. Meeks
U.S. House of Representatives
2234 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Meeks:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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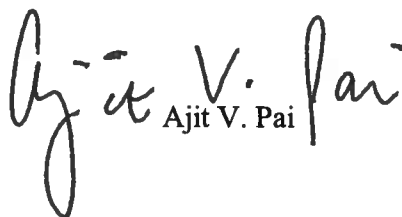
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Page 2—The Honorable Gregory W. Meeks

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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Hakeem Jeffries
U.S. House of Representatives
1607 Longworth House Office Building
Washington, DC 20515

Dear Congressman Jeffries:

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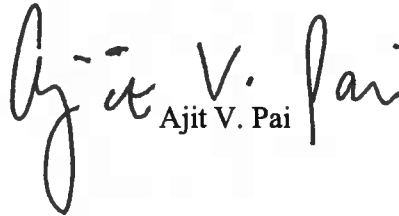
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Page 2—The Honorable Hakeem Jeffries

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Max Rose
U.S. House of Representatives
1529 Longworth House Office Building
Washington, DC 20515

Dear Congressman Rose:

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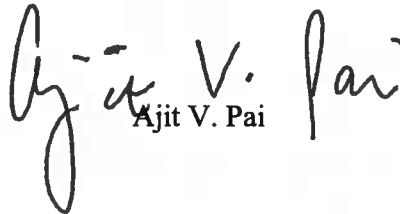
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Page 2—The Honorable Max Rose

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WASHINGTON

July 31, 2019

The Honorable Nita M. Lowey
U.S. House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Lowey:

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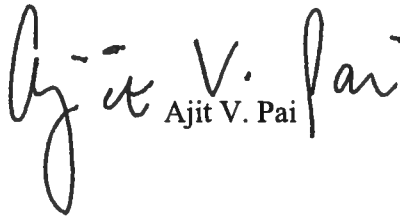
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Page 2—The Honorable Nita M. Lowey

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WASHINGTON

July 31, 2019

The Honorable Nydia M. Velazquez
U.S. House of Representatives
2302 Rayburn House Office Building
Washington, DC 20515

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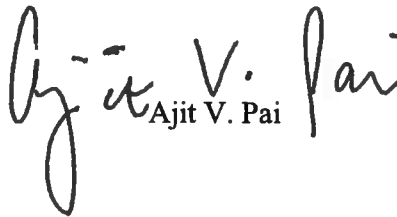
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Page 2—The Honorable Nydia M. Velazquez

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July 31, 2019

The Honorable Tom Suozzi
U.S. House of Representatives
226 Cannon House Office Building
Washington, DC 20515

Dear Congressman Suozzi:

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As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines “franchise fee” to include “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.” 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms “tax” and “assessment” were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of “franchise fee” *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The draft order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are “franchise fees” subject to the Act’s five-percent cap unless otherwise expressly excluded.

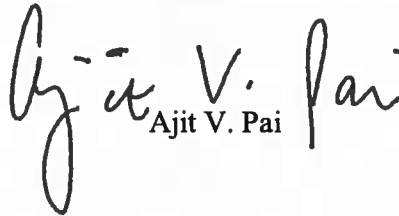
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

Page 2—The Honorable Tom Suozzi

The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Yvette D. Clarke
U.S. House of Representatives
2058 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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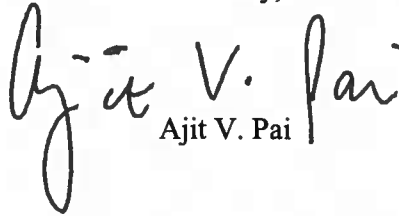
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Page 2—The Honorable Yvette D. Clarke

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Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Jerrold Nadler
U.S. House of Representatives
2109 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Nadler:

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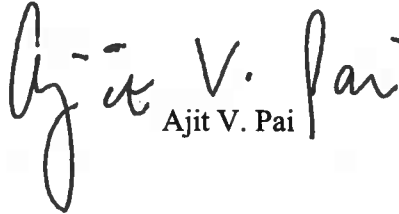
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Page 2—The Honorable Jerrold Nadler

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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Jose E. Serrano
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Serrano:

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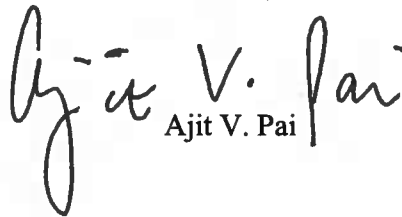
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Page 2—The Honorable Jose E. Serrano

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